

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHRISTOPHER HOWE, :
Individually, and on :
Behalf of all others :
Similarly situated, :
Plaintiff :
-vs- : CASE NO. 1:19-cv-01374
SPEEDWAY LLC AND :
MARATHON PETROLEUM :
COMPANY, :
Defendants :

Deposition of MATT GREEN, a witness
herein, taken by the Plaintiff as upon
cross-examination and pursuant to the Ohio Rules of
Civil Procedure as to the time and place and
stipulations hereinafter set forth, at the offices
of Britton & Associates, 201 Riverside Drive, Suite
2B, Dayton, Ohio at 11:39 a.m., on January 17,
2020, before Jamie S. Hurley, Court Reporter and
Notary Public within and for the State of Ohio.

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1 WHEREUPON:

2 MATT GREEN,
3 of lawful age, a witness herein, being first duly
4 sworn as hereinafter certified, testified as
5 follows:

6 CROSS-EXAMINATION

7 BY MR. STEPHAN:

8 Q. Good morning, Matt. Can you please
9 state and spell your name for the record?

10 A. Yeah. It's Matt Green. Did you say
11 spell, too, or --

12 Q. If you could spell your last name,
13 please.

14 A. Sure. It's, G-R-E-E-N.

15 Q. Is it okay if I call you Matt today?

16 A. That's fine.

17 Q. Okay. Have you ever been deposed
18 before?

19 A. I have.

20 Q. How many times?

21 A. Two or three. I want to say three.

22 Q. Okay. When was the last time you were
23 deposed?

24 A. Oh, it's been a few years, probably
25 five or six.

1 A. Yeah. That would be the various
2 systems rights so that would be your SAP
3 environments. We have a recruiting onboarding
4 system. We have a time and attendance system.
5 What else? It seems like I'm missing another
6 system but those are the main ones.

7 Q. Okay. Currently what time and
8 attendance system does Speedway use?

9 A. Currently we are using Infor time and
10 attendance.

11 Q. Okay. Is Infor a separate vendor?

12 A. It is.

13 Q. How long has Speedway used Infor?

14 A. That went in, I think we rolled it out
15 in 2018.

16 Q. Do you remember when in 2018?

17 A. It would have started at the, maybe the
18 beginning part of the year in, because of our size
19 it would have, I believe it took the whole year.

20 Q. Okay. And what was the time and
21 attendance system used by Speedway before Infor?

22 A. I knew it as TimeLink but it was
23 purchased by Kronos at some point.

24 Q. Okay. TimeLink, was that a separate
25 company?

1 A. Yes.

2 Q. And then it's your understanding that
3 TimeLink was then purchased or bought out at some
4 point by Kronos; is that correct?

5 A. That's correct.

6 Q. Do you know when Speedway first started
7 using TimeLink?

8 A. It goes back to, I want to say 2005,
9 2006, somewhere in there.

10 Q. Okay. And do you know approximately
11 when Kronos purchased TimeLink?

12 A. No, I don't know specifically. I would
13 say it was much later but, or more recent I guess,
14 but I don't know specifically.

15 Q. Do you know the year?

16 A. No. I've even trying to think of the
17 year here. No, I'd be guessing if I said
18 something. I don't know.

19 Q. Do you know if it's been within the
20 past five years?

21 A. Maybe, sounds right.

22 Q. If you wanted to find out, could you?

23 A. I'd probably have to do some inquiry.

24 Q. And how would you do that?

25 A. We still, well, no, we don't. They

1 communicated with Kostas?

2 A. It's been years.

3 Q. Has it been more than two years?

4 A. Yeah, I believe so. That sounds right.

5 Q. It's been more than three years?

6 A. I would venture to say three. I think
7 it's been more like four or five but I can't be
8 specific.

9 Q. Okay. The last time you spoke with
10 Kostas was he the employee of Kronos?

11 A. Yes. He would have been an employee of
12 Kronos.

13 Q. Do you know where he physically works?

14 A. I do not. The original TimeLink group
15 was out of New York, I believe, but I don't know
16 once he went to Kronos where he would have been.

17 Q. Okay. Going back to TimeLink I think
18 you mentioned that Speedway used them as early as
19 2005 or 2006?

20 A. Correct.

21 Q. Okay. What services did TimeLink
22 provide to Speedway?

23 A. TimeLink basically provided us with a
24 time and attendance solution as well as some time
25 clocks for our stores.

1 Q. Were they provided, they provided
2 hardware, the clocks themselves and then also a
3 software solution?

4 A. Correct.

5 Q. Did they provide any other services?

6 A. No. That would have been it.

7 Q. Okay. The clocks that they produced,
8 were those used in Speedway stores?

9 A. Yes. They were used in, yeah, our
10 legacy Speedway stores, yeah.

11 Q. Okay. Do you know approximately how
12 many clocks TimeLink produced?

13 A. TimeLink would have been before the
14 Hess acquisitions so 1,500, give or take.

15 Q. Okay. And do you know when TimeLink
16 provided those 1,500 or so clocks?

17 A. That would have been on the original
18 implementation and, again, I'm guessing about 2005
19 or 2006.

20 Q. Okay. Is there a record anywhere at
21 Speedway showing when those clocks were purchased?

22 A. Not that I'm aware of.

23 Q. There should be a purchase record,
24 correct?

25 A. There could be. I'm not in purchasing

1 have to get some additional ones, I believe, from
2 Kronos.

3 Q. Okay. So I just want to kind of
4 summarize here to make sure we're on the same page
5 here. So going back to 2005 there was
6 approximately 1,500 time clocks provided by
7 TimeLink, correct?

8 A. Correct.

9 Q. And those were purchased by Speedway?

10 A. Correct.

11 Q. Between 2005 or 2006 and 2018 Speedway
12 purchased additional clocks from Kronos?

13 A. Yes. But it would have been, it's not
14 going to be as early as 2005, 2006. It's going to
15 be towards the end of life so somewhere in the
16 couple years before Infor.

17 Q. So around 2015 or so?

18 A. Yeah. '13, '14, '15, somewhere in
19 there.

20 Q. Okay. And how many clocks did Speedway
21 purchase from Kronos at that time?

22 A. You're talking maybe 100 or so.

23 Q. Does 150 sound right?

24 A. Yeah. That's 100 or so, yeah.

25 Q. And were those all purchased at the

1 them.

2 Q. Do you know how those clocks
3 functioned?

4 A. A little bit because of the discussion
5 when we initially bought them.

6 Q. Okay. Were those clocks sent out to
7 stores, Speedway stores in Illinois also?

8 A. Yes. Illinois would have been one of
9 our states at the time, yes.

10 Q. Okay. And approximately how many
11 stores would there have been in Illinois back in
12 2005 or so?

13 A. That's a great question. 100 would be
14 my guess.

15 Q. Okay. And those TimeLink time clocks
16 that were sent to Illinois stores, were they used
17 by store employees?

18 A. Yes.

19 Q. Okay. Did all of the hourly paid store
20 employees have to use those types of clocks to
21 record their time?

22 A. All the employees at the store level
23 would clock in and out with the clocks.

24 Q. Okay. So customer service would have
25 to clock in and out?

1 A. No. On all the store level employees
2 so that would be our general managers, the
3 assistants and the hourly CSRs.

4 Q. Okay. What does CSR stand for?

5 A. Customer service representative.

6 Q. Okay. That's what I was asking.

7 A. Okay. Okay.

8 Q. Okay. So all of the store employees in
9 Illinois would have to record their time using
10 these TimeLink time clocks between 2005 and 2015 or
11 so; does that sound about right?

12 A. Yep. Correct.

13 Q. Okay. And do you know how many
14 employees in Illinois use those time clocks between
15 that time?

16 A. No. That, I have no idea.

17 Q. Okay. We can find that out by looking
18 at the HRIS, correct?

19 A. Yes. We could probably run a report
20 and determine how many employees were at a store.

21 Q. Okay. And we could find out all of the
22 employees that were in Illinois, for example,
23 between that time?

24 A. Yes.

25 Q. Okay. So sticking with this TimeLink

1 clock, before employees, store employees could use
2 it, would they have to be enrolled?

3 A. They did have to be enrolled, correct.

4 Q. And are you familiar with that process?

5 A. I'm vaguely trying to recall it, yes.

6 I am familiar with it.

7 Q. Okay. Can you tell us how they would
8 be enrolled?

9 A. So from what I recall the manager had
10 to go up to the clock, scan their finger. I
11 believe there was a code they put in. I don't know
12 that that code was and then or maybe it was a
13 button that said enroll employee. I can't recall.
14 And then the employee had to put their finger up
15 there and scan it three times.

16 Q. Okay. And when you say scan their
17 finger, what part of their finger would they have
18 to scan?

19 A. We told them their index finger but we
20 had, we had employees, like, that were formally
21 cooks and stuff where they couldn't read it, so
22 they could use the side of their finger, the side
23 of their knuckle, I mean, anything like that would
24 actually work.

25 Q. So when you say they could use their

1 sorry, there was a step in there somewhere that the
2 manager had to put their employee number in, too.

3 So I think they did that and then they scanned the
4 finger three times.

5 Q. Okay. Was there also a step to confirm
6 that the image had been properly recorded?

7 A. I think that happened after the third
8 scan. It might have turned green or something.
9 It's been a while but there had to have been
10 something that, that maybe it beeped. There was
11 something to let them know that they were good.

12 Q. Okay. Back during this time when the
13 TimeLink clocks were used between 2005 and 2015 or
14 so, well, first thing, did you ever see them
15 referred to as biometric clocks or biometric time
16 clocks?

17 A. Yes, biometric, yep.

18 Q. Okay. And back during this time did
19 Speedway obtain written consents from its employees
20 in Illinois before they were enrolled in those
21 TimeLink time clocks?

22 A. Written consent, no.

23 Q. Back during that time between 2005 and
24 2015 did Speedway have any sort of publicly
25 available policy regarding the use of those

1 employees fingerprints on the time clock?

2 A. No.

3 Q. The TimeLink time clocks, where in the
4 store would they be located?

5 A. I believe it varied depending on space
6 and having to connect into the store network to
7 make it all work but typically they were somewhere
8 close to probably the front registers as you go
9 into the back room so somewhere right in there.

10 Q. Okay.

11 A. But it did vary.

12 Q. And you mentioned that they were
13 networks, correct?

14 A. Yeah. Somehow the clocks had to
15 communicate to the software.

16 Q. Okay. And where was the software
17 located?

18 A. The software was somewhere on our
19 network because the manager had to get to it on
20 their back office computer.

21 Q. Okay. You're talking about the
22 Speedway network?

23 A. The Speedway store network, correct.

24 Q. Okay. And that would be on servers in
25 Enon, Ohio; is that correct?

1 employee, that would help identify each employee?

2 A. Yeah. I guess you could say that where
3 if you had a card or something like that, then that
4 could be borrowed, right?

5 Q. Right. Okay. So going back to the
6 Kronos clocks are those still being used, by the
7 way?

8 A. No. They would have been pulled out
9 when the TimeLink clocks were pulled out.

10 Q. Okay. Sometime in 2018?

11 A. Yes. When we put the Infor clocks in,
12 yep.

13 Q. When the Kronos clocks were rolled out
14 and when Speedway employees were enrolled did
15 Speedway require written consent before they were
16 enrolled?

17 A. We did not require written consent, no.

18 Q. Okay. The third type of clock is the
19 Infor time clock; is that correct?

20 A. That's the one we have now, correct.

21 Q. Okay. And do you know who the
22 manufacturer of that clock is?

23 A. I do not.

24 Q. Do you know what the name of it is?

25 A. I do not. I couldn't tell you if we

1 had the Infor logo on that one or not.

2 Q. Does it also utilize finger scan
3 technology?

4 A. Yes, it does.

5 Q. Okay. And have they, are those clocks
6 being used in Illinois stores?

7 A. They should be, yes. That is correct.

8 Q. And do employees have to enroll in
9 those clocks to be able to use them?

10 A. There is an enrollment feature, yes.

11 Q. And do you know how that process works?

12 A. I do not on the new ones, no.

13 Q. Do you know if employees have to
14 provide a scan of their finger to become enrolled?

15 A. Yes. They would have to do that.

16 Q. Okay. Has Speedway obtained written
17 consent from its employees before they were
18 enrolled in the Infor time clocks?

19 A. Yes. They provide written consent
20 today.

21 Q. Okay. When did Speedway first require
22 written consent to use its time clocks?

23 A. It's been a year or two, somewhere in
24 the mix there.

25 Q. Okay. Were you involved in that

1 Let's say five minutes.

2 MR. STEPHAN: Yeah. That sounds
3 good.

4 MR. WOLFE: All right.

5 (WHEREUPON, a recess was taken.)

6 BY MR. STEPHAN:

7 Q. Matt, can you think of any reason why
8 Speedway did not require written consent for its
9 Illinois employees before they were enrolled in the
10 time clocks before doing so in 2018?

11 A. Yeah. I don't know.

12 Q. Okay.

13 (WHEREUPON, Plaintiff's Exhibit
14 No. 1 was marked for identification.)

15 BY MR. STEPHAN:

16 Q. Matt, have you seen this document
17 before?

18 A. Intracompany Correspondence, not
19 recalling it, no.

20 Q. Okay. Do you know any of the people
21 that are listed under the to heading?

22 A. Under the to, yes.

23 Q. Who do you know?

24 A. Don Wehrly, D.W. Wehrly.

25 Q. Okay.

1 regardless of whether it was a TimeLink clock, a
2 Kronos, or an Infor clock, correct?

3 A. So that's true of the TimeLink clock
4 and I think I stated earlier I'm not 100 percent
5 sure on the Kronos or the Infor.

6 Q. Okay. But you would agree that they
7 generally went through the same enrollment process?

8 A. I would say it was a similar enrollment
9 process without knowing specifically how that
10 process worked, yes.

11 Q. Okay. Would you agree that they are
12 subject to the same policies regarding those time
13 clocks?

14 A. Policies, what do you mean by that?

15 Q. Any policies, time and attendance
16 policies --

17 A. Like clocking in, clocking out, breaks,
18 all that good stuff?

19 Q. That's right.

20 A. Yes. Yes, I would agree with that.

21 Q. And you disagree that prior to November
22 of 2017 Speedway did not obtain written consents
23 from them before they were enrolled?

24 A. I do not believe they obtained written
25 or provided written consent; that is correct.

1 Q. Okay. And you'd also agree that prior
2 to that date November of 2017 they weren't informed
3 of a publicly available BIPA policy?

4 A. I don't know that specifically.

5 Q. Okay. Are you aware of a publicly
6 available BIPA policy existing before November of
7 2017?

8 A. No, I do not believe so.

11 THE WITNESS: Okay. Thanks.

12 MR. STEPHAN: I appreciate it.

13 Yep.

14 THE WITNESS: All right.

15 MR. WOLFE: We don't have
16 anything. See you, Ryan.

17 MR. STEPHAN: Thanks, Matt.

18 (WHEREUPON, deposition concluded
19 at 1:52 p.m.)

20 * * * *

23 MATT GREEN